IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4941 OF 2005

Mardia Copper Ind. & Ors. .. Petitioners.
V/s.
The Union of India & Ors. .. Respondents.

Mr.Prakash Shah i/b. PDS Legal for the petitioners.

Mr.M.I. Sethna, senior counsel with Mr.A.M. Sethna for the respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 17TH AUGUST, 2005.

P.C. :

1. Heard.

2. Rule. Rule returnable forthwith by consent of the parties.

3. The petition is directed against the order dismissing the appeal in default. There is no clear finding that even on the old address, the petitioners were served. It is no doubt true that the petitioners ought to have placed their changed address on the record of the appeal pending before the Tribunal. Since no notice was issued even on the old address, absence or presence of new or changed address losses its relevance. The restoration application ought to have been allowed by the

Settlement Commission; at the most subject to payment of cost.

4. However, without going into the details of the rival contentions and looking to the consensus between the parties, in the interest of justice, the impugned order is set aside subject to deposit of cost in the sum of Rs.5,000/- with the tribunal for being paid to the revenue within two weeks from today.

5. The appeal is restored to file of the tribunal subject to deposit of costs. The tribunal is directed to hear and decide the appeal as expeditiously as possible and preferably at any rate within three months from the date of receipt of copy of this order.

6. Rule is, accordingly, made absolute in terms of this order. No costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)